

Rule 280, Certification and Assessment of Costs, of the Rules of Procedure of the State Bar of California: Sets forth the process by which disciplinary costs are assessed.

The proposed amendments follows:

- In subsections (a) and (b) of rule 280, the proposed amendments recognize that the Office of Probation is now separate from the Office of the Chief Trial Counsel and the State Bar Court and may submit a cost certificate in a probation revocation proceeding.
- In subsection (c), the proposed amendment clarifies that disciplinary costs are only awarded as to those “matters” in which a respondent has been found culpable.¹ The proposed amendment to subsection (c) also defines a “matter” as a separate investigation initiated by the Office of the Chief Trial Counsel against the member, irrespective of the number of statutory or rule violations that may be alleged and provides that a member has been found culpable in that “matter” if he or she is found culpable of one or more statutory or rule violations in the matter.
- New subsection (d) of rule 280 would simply codify the existing practice of assessing disciplinary costs against a member who has resigned from the practice of law with charges pending. Under current practice, the member is assessed not only the cost of processing his resignation (currently \$89), but is also assessed the disciplinary costs that had been incurred in the underlying disciplinary investigation or proceeding at the time of the member’s resignation, provided that costs are only assessed as to those matters in which the Office of the Chief Trial Counsel’s investigation has been completed.

¹ Rule 280(c), in its current form, authorizes the State Bar to assess disciplinary costs as to **all** matters in a disciplinary proceeding, including matters in which the member was not found culpable of misconduct. While it is our understanding that the Office of the Chief Trial Counsel does not seek costs relating to matters in which it did not prevail, the staff working group agrees that it would be appropriate to amend rule 280(c) to reflect the actual practice.

Proposed Amendments to
Rule 280, Rules of Procedure of the
State Bar of California

(Deletions are indicated by ~~Strikeout~~. Additions are indicated by ***Bold, Underline, Italics***)

RULE 280. CERTIFICATION AND ASSESSMENT OF COSTS.

Pursuant to Business and Professions Code section 6086.10:

- (a) Respondents ordered publicly reprov'd shall be ordered to pay the costs of the disciplinary proceeding based upon cost certificates of the Office of the Chief Trial Counsel or the Office of Probation and of the State Bar Court.
- (b) The record of the State Bar proceedings transmitted to the Supreme Court with a ~~record~~***recommendation*** of suspension, disbarment or acceptance of a member's resignation with disciplinary charges pending, shall be accompanied by the cost certificates of the Office of the Chief Trial Counsel or the Office of Probation and of the State Bar Court.
- (c) Costs shall be awarded to the State Bar with respect to ~~the entire proceeding if the State Bar has prevailed as to at least one of the charges alleged in the proceeding. In matters which have been consolidated for purposes of hearing or decision, costs shall be awarded to the State Bar with respect to each of the consolidated matters, if the State Bar has prevailed as to at least one of the consolidated matters, unless good cause is established to order otherwise.~~***any matter for which a respondent has been found culpable. For purposes of this rule, a "matter" is defined as a separate investigation initiated by the Office of the Chief Trial Counsel against a member, irrespective of the number of charged statutory and/or rule violations relating to that matter. A member has been found culpable in a matter if he or she is found culpable or one or more statutory or rules violations in that matter. "Matter" shall also include a probation revocation proceeding initiated by the Office of Probation and a conviction proceeding initiated by the Clerk of the State Bar Court following a referral order by the State Bar Court or the Supreme Court.***
- (d) ***If a respondent resigns from the practice of law with disciplinary charges pending against him or her, costs shall be awarded to the State Bar for both (i) the costs applicable to the processing of the respondent's resignation; and (ii) the costs applicable to the underlying pending disciplinary investigation or proceeding in light of the status of the proceeding at the time the respondent's resignation was received by the State Bar, provided that costs shall only be awarded as to those matters in which the State Bar's investigation was completed at the time the respondent's resignation was received by the State Bar.***
- (~~d~~***e***) If the Court orders that disciplinary costs be paid in installment payments, the order imposing costs shall require the payments to be made on an annual basis, designating the amount of each annual installment. Each installment payment shall be added to and become a part of the annual membership fees of the member.
- (~~e~~***f***) This rule does not limit the authority of the State Bar Court to grant relief from costs pursuant to Rule 282 and Business and Professions Code section 6086.10(c).